

1 KEKER & VAN NEST LLP  
ROBERT A. VAN NEST - #84065  
2 BRIAN L. FERRALL - #160847  
DAVID SILBERT - #173128  
3 MICHAEL S. KWUN - #198945  
633 Battery Street  
4 San Francisco, CA 94111-1809  
Telephone: (415) 391-5400  
5 Email: rvannest@kvn.com;  
bferrall@kvn.com; dsilbert@kvn.com;  
6 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528  
SCOTT A. SHER, SBN 190053  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
1700 K Street NW, Fifth Floor  
Washington, D.C., 20006-3817  
Telephone: (202) 973-8800  
Email: screighton@wsgr.com;  
ssher@wsgr.com

7  
8 JONATHAN M. JACOBSON, NY SBN 1350495  
CHUL PAK (*pro hac vice*)  
DAVID H. REICHENBERG (*pro hac vice*)  
9 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
10 1301 Avenue Of The Americas, 40th Floor  
New York, NY 10019-6022  
11 Telephone: (212) 999-5800  
Email: jjacobson@wsgr.com; cpak@wsgr.com;  
12 dreichenberg@wsgr.com

13 Attorneys for Defendant ARISTA NETWORKS, INC.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,

18 Plaintiff,

19 v.

20 ARISTA NETWORKS, INC.,

21 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**[PROPOSED] ORDER GRANTING  
DEFENDANT ARISTA NETWORKS,  
INC.'S MOTION TO STRIKE EXPERT  
OPINIONS AND TESTIMONY OF  
DR. KEVIN C. ALMEROTH**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 The Court, having fully considered the papers and arguments presented by the parties,  
 2 hereby GRANTS Arista Networks, Inc.'s Motion to Strike Expert Opinions and Testimony of  
 3 Dr. Kevin C. Almeroth as follows:

4 Based on the arguments and written submissions, the Court finds that the following  
 5 portions of the "Opening Expert Report of Kevin Almeroth Regarding Copying" submitted on  
 6 June 3, 2016, and the "Rebuttal Expert Report of Kevin Almeroth" submitted on June 17, 2016,  
 7 are inadmissible and excluded under Federal Rules of Evidence 702, 402, and 403, and under  
 8 *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) because they are lay opinions or  
 9 summations of evidence that will not assist the trier of fact to understand the evidence or to  
 10 determine a fact in issue, they are not based on sufficient facts or data, they are not based on  
 11 reliable principles and methods, and/or Dr. Almeroth has not reliably applied those methods to  
 12 the record evidence:

- 13 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying  
 14 of Cisco's parser source code, including his opinion that Arista's parser  
 15 exhibits "non-standard" behavior. Opening Rpt. ¶¶ 81–87, 224; Almeroth  
 16 Dep. Tr. 276:25–278:10, 279:9–280:11, 280:13–281:12.
- 17 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying  
 18 of Cisco source code relating to CLI command "help descriptions." Opening  
 19 Rpt. ¶¶ 100, 221, 225–230 and Exhibit Copying-6; Rebuttal Rpt. ¶ 148(a).
- 20 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying  
 21 of the Cisco CLI's "look and feel." Opening Rpt. ¶¶ 65, 174; Rebuttal Rpt.  
 22 ¶¶ 64, 70, 136, 137, 145, 158; Almeroth Dep. Tr. 123:1–5; 124:18–125:5;  
 23 125:22–126:18; 127:3–128:10; 129:25–143:18.
- 24 • Dr. Almeroth's lay opinions and summations of evidence regarding Arista's  
 25 state of mind, including opinions regarding the knowledge, specific intent, and  
 26 beliefs of Arista employees pertaining to indirect infringement, bad faith, and  
 27 lay opinions and arguments summarizing other non-technical record evidence,  
 28 which is not proper expert testimony. Opening Rpt. ¶¶ 70, 73–76, 78–79, 112,  
 118, 138–40, 145–48, 152–53, 156–57, 195, 203, 219–20, 242, 246 (and  
 footnotes 188–91), 250, 256–57; Rebuttal Rpt. ¶¶ 104, 124, 132, 135, 137,  
 138–39, 142–43, 146–47, 149–50, 157, 159, 160.
- Dr. Almeroth's opinions and testimony that merely vouch for the credibility  
 and truthfulness of what individuals said in deposition testimony and in  
 documents, which invades the province of the jury. Opening Rpt. ¶¶ 51, 98,  
 102–10, 115, 136–37, 247, 260; Rebuttal Rpt. ¶¶ 62 (and footnote 30), 73, 75  
 (and footnote 47), 102 (and footnote 72), 108 (and footnotes 85 and 86), 125.

- Dr. Almeroth's opinions and testimony that merely involve performing a lay comparison of English words and sentences between Cisco and Arista user documentation. Opening Rpt. ¶¶ 155–167 and Exhibit Copying-1.

Dr. Almeroth will not be permitted to provide expert testimony regarding the foregoing opinions at trial.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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HON. BETH LABSON FREEMAN